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1  
2 1.4 **Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of  
3 Corrections, PAB No. D82-984 (1983); McCurdy v. Dep't of Social & Health Services, PAB No.  
4 D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995);  
5 Aquino v. University of Washington, PAB No. D93-163 (1995).

## 6 7 **II. FINDINGS OF FACT**

8 2.1 Appellant Mohammed Yemane is a Custodian and permanent employee for Respondent  
9 University of Washington with the Environmental Services Department. Appellant and Respondent  
10 are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and  
11 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 11, 2000.

12  
13 2.2 By letter dated June 29, 1995, Robert H. Muilenburg, Executive Director for the University  
14 of Washington Medical Center, informed Appellant of his five-day suspension effective January 9,  
15 2000. Mr. Muilenburg charged Appellant with insubordination, neglect of duty, and misconduct.  
16 The incidents which resulted in Appellant's suspension were outlined in a memo dated December  
17 16, 1999 by James Swafford, Director of the Environmental Services Department. The memo  
18 alleged that Appellant 1) refused to assist a coworker when she asked for his assistance, 2) informed  
19 his supervisors that he would not assist his coworker when asked and 3) became vulgar, abusive,  
20 argumentative and used profanity when given a work assignment by his supervisor.

21  
22 2.3 The Environmental Services Department is responsible for maintaining the University of  
23 Washington Medical Center in a clean and orderly fashion. A "terminal" cleaning occurs after a  
24 patient is discharged from a room. A "stat terminal" cleaning indicates that a room must be cleaned  
25 immediately because a patient has been admitted into the hospital and is waiting for a room  
26

1 accommodation. Custodial staff is required to respond immediately to clean a room when nursing  
2 staff calls to request a stat terminal cleaning.

3  
4 2.4 Appellant has been employed with Respondent since December 18, 1989. Appellant's  
5 employment history shows that he received a letter of reprimand dated September 20, 1999 for  
6 sleeping during work hours. In June 1995, Appellant was suspended without pay for  
7 insubordination, neglect of duty and violation of agency policy.

8  
9 2.5 As a Custodian for the Environmental Services Department, Appellant is responsible for  
10 cleaning the operating and emergency rooms (floors one through three) at the University of  
11 Washington Medical Center (UWMC). Appellant and coworker Lemlem Tesfamarian work the  
12 graveyard shift from 11:30 p.m. to 8:30 a.m. Ms. Tesfamarian is responsible for cleaning floors  
13 four through eight, where patient rooms are located. Because Appellant and Ms. Tesfamarian are  
14 the only two custodial staff on duty during the graveyard shift, they are required to work  
15 cooperatively and assist one another whenever necessary.

16  
17 2.6 On October 24, 1999, both Appellant and Ms. Tesfamarian were on duty. Ms. Tesfamarian  
18 received a request from nursing staff for a stat terminal cleaning. Because of her heavy workload  
19 that evening, Ms. Tesfamarian required Appellant's assistance. Ms. Tesfamarian approached  
20 Appellant who was cleaning an operating room. Ms. Tesfamarian asked Appellant to assist her  
21 complete a stat terminal cleaning, however, Appellant refused to help. Consequently, Ms.  
22 Tesfamarian completed the stat terminal cleaning without Appellant's assistance.

23  
24 2.7 On October 25, 1999, Ms. Tesfamarian reported Appellant's refusal to perform a stat  
25 cleaning to Supervisor Reynaldo Aguas. Mr. Aguas then approached Appellant and reminded him  
26 that it was his responsibility to assist his coworker whenever necessary, but especially when there

1 was a nursing request for a stat terminal cleaning. Appellant informed his supervisor that it was not  
2 his job to perform stat terminal cleaning. Later that same day, Sylvester Weaver, Supervisor 2,  
3 reviewed the Environmental Services Policies manual with Appellant. Mr. Weaver reminded  
4 Appellant that it was one of his responsibilities to assist his coworker with terminal cleanings  
5 whenever necessary. Appellant again responded that he would not assist his coworker.

6  
7 2.8 On November 2, 1999, Mr. Aguas approached Appellant about a job assignment. Appellant  
8 became agitated, loud and abusive. When Appellant began to walk away, Mr. Aguas directed him  
9 to follow Mr. Aguas to his office. Appellant responded, "Shit. I don't want to go to the office.  
10 Fuck you." Appellant refused to follow his supervisor's directive.

11  
12 2.9 James J. Swafford, Director of Environmental Services, issued a recommendation that  
13 Appellant receive a five-day suspension without pay for the incidents of October 24, 25 and  
14 November 2. In issuing his recommendation, Mr. Swafford reviewed Appellant's history with the  
15 department, which included a prior 15-day suspension and a letter of reprimand. Mr. Swafford also  
16 weighed the department's responsibility to ensure that rooms be cleaned immediately and ready for  
17 patients already admitted to the hospital. Mr. Swafford concluded that Appellant neglected his duty  
18 and was insubordinate when he failed to assist with stat terminal cleanings as he had been directed  
19 to do by his supervisor. Mr. Swafford also believed that Appellant's use of vulgar language was  
20 disruptive, disrespectful and set a bad example for other employees. Ms. Swafford wanted to  
21 impress upon Appellant the importance of the department's core values of respect, service,  
22 accountability and excellence, and that his behavior would not be tolerated. He concluded that a  
23 five-day suspension was the appropriate sanction.

### III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant was advised on numerous occasions by his supervisors that stat terminal cleanings were an urgent priority and that he was required to perform that task when necessary. Respondent argues that Appellant was neglectful of his duties when he refused to assist Ms. Tesfamarian perform a stat terminal cleaning on October 24. Respondent contends that Appellant's failure to assist Ms. Tesfamarian was contrary to Mr. Aguas' prior directive and that this refusal constitutes insubordination. Respondent contends that Appellant was also insubordinate on October 25 when he informed his supervisors that he would not assist in performing terminal stat cleanings. Respondent further argues that Appellant was insubordinate and disrespectful when he became argumentative and used profanity when approached by his supervisor about a job assignment. Respondent contends that Appellant's misconduct created inefficient operations, delays in patient care, and negatively affected employee morale. Respondent argues that Appellant had been subject to prior disciplinary action for insubordination and that a five-day suspension is not too severe under the circumstances of this case.

3.2 Appellant asserts that he has a good work history and that former supervisors complimented his work. Appellant contends that his current supervisors are scrutinizing him more than other employees in order to find fault with his work. Appellant denies the allegations and asserts that he has been treated unfairly and was never given an opportunity to present his side of the events. Appellant denies that he used profanity at work, asserts that this case is about personal hatred towards him rather than the work he performs and that he has been truthful.

### IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

1 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
2 the charges upon which the action was initiated by proving by a preponderance of the credible  
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-  
5 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

6  
7 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
8 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
9 of Social & Health Services, PAB No. D86-119 (1987).

10  
11 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
12 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
13 Dep't of Social & Health Services, PAB No. D94-025 (1995).

14  
15 4.5 Although it is not appropriate to initiate discipline based on prior formal and informal  
16 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
17 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
18 D93-163 (1995).

19  
20 4.6 Respondent has proven by a preponderance of the evidence that Appellant neglected his  
21 duty and was insubordinate when he refused to assist Ms. Tesfamarian and when he informed his  
22 supervisors that he would not assist her when asked. Appellant had a duty to follow his  
23 supervisors' directives and his outright refusal to perform his duties undermined their ability to  
24 ensure that patient rooms were ready for patients as soon as possible. Furthermore, Appellant was  
25 disrespectful and unprofessional when he used profanity when discussing a work assignment with  
26

1 his supervisor. Under the circumstances of this case and in light of Appellant's prior disciplinary  
2 history, a five-day suspension is not too severe and the appeal should be denied.

3

4

**V. ORDER**

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NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mohammed Yemane is  
denied.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

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WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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Leana D. Lamb, Member

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